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BY HAND

R. Bruce Rich

November 4, 2013

The Honorable Colleen McMahon
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: Flo & Eddie, Inc. v. Sirius XM Radio Inc., Case No. 13-cv-5784CM

Dear Judge McMahon:

We write on behalf of defendant Sirius XM Radio Inc. ("Sirius XM") to respond to the letter to the Court submitted by plaintiff Flo & Eddie, Inc. ("Plaintiff") on Friday, November 1, 2013 ("Plaintiff's November 1 Letter").

Plaintiff's November 1 Letter incorrectly suggests that the Southern District of New York's Standing Order entitled "In re: Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York" applies in this matter and, based on that erroneous premise, that Sirius XM's partial motion to dismiss the Complaint (Dkt. 15) does not comply with certain procedures under that order. *See* Pl.'s Nov. 1 Letter at 1. While Plaintiff cites Docket Entry 2 as purporting to reflect Pilot Project treatment for this case, no such entry presently appears on the docket available through PACER. We first appeared in this action on September 18, and we are not otherwise aware of any such order.

Even had this case been designated for the Pilot Project, Sirius XM's motion to dismiss plainly would be in compliance. Under the Standing Order, the Court "may consider" using certain procedural options when dealing with a motion to dismiss pursuant to Rule 12(b). Option (a) is "[n]ot requiring a pre-motion conference." Your Honor's Individual Rules of Practice make abundantly clear that no pre-motion conference is required. *See* Section IV(B) ("Judge McMahon does not require pre-motion conferences for substantive motions. Do not send letters asking for permission to make a motion. Just make the motion.")

Plaintiff also seeks "clarification" of its deadline to oppose Sirius XM's Rule 12(b)(6) motion to dismiss, including whether the Court will hold a post-motion conference and whether Plaintiff's time to oppose the motion will be stayed. Sirius XM respectfully submits that no clarification is necessary and

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opposes Plaintiff's request for a stay of its time to respond.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Bruce Rich", followed by a long horizontal flourish.

R. Bruce Rich
cc: Counsel of Record (by email)